



Comptroller General
of the United States
Washington, D.C. 20548

1146582

Decision

Matter of: Aqua-Trol Corporation

File: B-246473.2

Date: May 5, 1992

Sam Zalman Gdanski, Esq., for the protester.
Adam C. Striegel, Esq., General Services Administration,
for the agency.
Jacqueline Maeder, Esq., Glenn Wolcott, Esq., and
Paul Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where solicitation required submission with bids of samples which conformed to the solicitation specifications, protester's bid was properly rejected as nonresponsive where its bid samples failed to comply with the specifications.

DECISION

Aqua-Trol Corporation protests the rejection of its bid for Type II, Oscillating Head Sprinklers (NSN 3750-00-959-3490) and for Type III, Rotary Head Sprinklers (NSN 3750-00-203-3933) under invitation for bids (IFB) No. 7FXI-T6-91-3703-S, issued by the General Services Administration (GSA). GSA rejected Aqua-Trol's bid on these items because the bid samples Aqua-Trol submitted were found to be nonconforming to the specifications set forth in the solicitation.

We deny the protest.

The IFB solicited bids for four types of lawn sprinklers and three types of soaker hoses. The IFB required bidders to submit one bid sample for each of the four types of sprinklers. The IFB's "Bid Samples" clause (Federal Acquisition Regulation (S 52.214-20) required that the bid samples be submitted as part of the bid and provided that the samples would "be tested or evaluated to determine compliance with all the characteristics listed . . . in this solicitation." The clause further stated that failure of the bid samples to meet the IFB requirements would require rejection of the bid.

Eight bids, including Aqua-Trol's, were submitted by the December 6, 1991, bid opening date. On December 19, GSA conducted an evaluation of the bid samples based on the specifications set forth in the solicitation. Among other things, the IFB required that all sprinklers be marked in a permanent manner with the manufacturer's name or trademark and that the oscillating head sprinkler be at least 5-1/2 inches in width and have base runners made of metal or reinforced plastic.

GSA's evaluators found that Aqua-Trol's bid sample for the oscillating head sprinkler failed to comply with the IFB requirements since the sprinkler base at its widest point was less than 5 inches, the base runners were made of non-reinforced plastic, and there was no permanent identification of the manufacturer's name or trademark on the sprinkler. The evaluators similarly found Aqua-Trol's bid sample for the rotary head sprinkler to be unacceptable for failure to provide permanent manufacturer's identification as required.

Aqua-Trol protests that the agency improperly rejected its bid for failing to meet the required specifications.¹ Specifically, Aqua-Trol states that the oscillating head sprinkler sample it submitted had a taped-on "wing" on each runner to widen the base to the required 5-1/2 inches. The protester submitted a letter with its bid sample stating that if Aqua-Trol received the award for this sprinkler, the "wings" would be an integral part of the base "to give us a wider base to meet [the agency's] requirement." With regard to the requirement that the sprinkler base be made of metal or reinforced plastic, Aqua-Trol does not dispute the agency's conclusion that the sprinkler it offered failed to comply, but argues instead that this requirement is "useless." Aqua-Trol similarly admits that there was no permanent identification on the samples it submitted, stating that it "would have hot-stamped the name into the base" once it received the award.

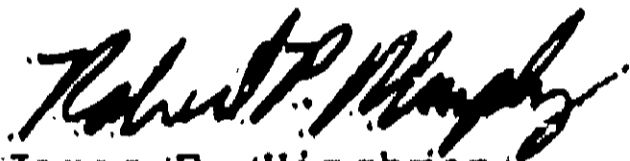
Where a solicitation lists definitive specifications and requires that bid samples strictly comply with these specifications, a sample that does not so comply renders a bid nonresponsive. Warren Corp., IB-229669.2, Mar. 10, 1988, 88-1 CPD ¶ 249; ATD-Am. Co., IB-227134, July 17, 1987, 87-2 CPD ¶ 58. The failure of a bid sample to meet stated

¹Aqua-Trol also argues that the specifications in the IFB are unduly restrictive. We previously considered and rejected Aqua-Trol's arguments in this regard. See Aqua-Trol Corp., IB-246473, Mar. 5, 1992, 92-1 CPD ¶ ____.

solicitation specifications is, therefore, a proper ground for bid rejection and it would be improper for an agency to waive such a requirement. Id.

Here, the IEB clearly stated that the oscillating sprinkler must be of specific dimensions, stated construction, and permanently marked with the manufacturer's identification. The IEB further warned that a bidder's failure to submit samples which conformed to the IEB's specifications "will require rejection of the bid." Based on the record before us, which includes the actual bid samples submitted, we conclude that GSA reasonably found that Aqua-Trol's bid fails to comply with the IEB specifications. Specifically, the oscillating head sprinkler fails to meet the width requirement and is not made of reinforced plastic, and neither the rotary head sprinkler nor the oscillating head sprinkler are marked in a permanent manner with the manufacturer's name or trademark. Since Aqua-Trol did not unequivocally offer to provide items which conformed to the IEB specifications, the agency properly rejected its bid as nonresponsive. See ATD-Am. Co., supra.

The protest is denied.


for James E. Hinchman
General Counsel